

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PAYCARGO FINANCE LP,

CASE NO.: 1:22-cv-22707-KMW

Plaintiff,

vs.

ASPEN AMERICAN INSURANCE
COMPANY,

Defendant,

and

BAY MARITIMES INC.,

Nominal Defendant.

**PLAINTIFF'S PAYCARGO FINANCE LP'S STATEMENT OF MATERIAL FACTS IN
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Plaintiff PayCargo Finance LP ("Plaintiff"), pursuant to Local Rule 56.1(a), hereby files this Statement of Material Facts in support of its Motion for Summary Judgment, and states:

1. Bay Maritimes Inc. is an NVOCC based on Canada which essentially serves "as an intermediary to help clients with their freight." (P. Philliou Dep. at pg. 12) (attached as **Exhibit A**); *id.* at 13-14; *see also* 46 CFR § 515.2(m)(2) (an NVOCC or "[n]on-vessel-operating common carrier" is a type of "[o]cean transportation intermediary" or "OTI" which is "a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier"); *see generally* <https://www.ups.com/us/en/supplychain/resources/glossary-term/nvocc.page> (attached as **Exhibit B**) (NVOCC: "An ocean carrier who performs all of the services of a carrier, but who does not own their own vessel(s). They operate by leasing or buying available space in containers and using their own House Bill of Lading to contract with customers.").

2. On or about June 22, 2020, Aspen American Insurance Company issued an NVOCC Bond in the amount of \$150,000.00 which listed Bay Maritimes Inc. as the principal, and which expired on December 31, 2022 (the “NVOCC Bond”). (Bond) (attached as **Exhibit C**).

3. The NVOCC Bond was made to comply with the financial responsibility requirements the Federal Maritimes Commission (“FMC”) imposes upon Ocean Transportation Intermediaries (“OTIs”) under the Shipping Act. (Bond) (**Exhibit C**).

4. The NVOCC is made “for the benefit of any and all persons who have obtained a judgment or a settlement made pursuant to a claim under 46 CFR § 515.23 for damages against the Principal [Bay Maritimes Inc.] arising from the Principal’s transportation-related activities...” (Bond) (**Exhibit C**).

5. “PayCargo” is a payment platform that allows cargo payments to be made to its network of transportation and logistics vendors. (P. Philliou Dep. Tr. at pg. 16, 27-28, 58) (**Exhibit A**); *see generally* <https://paycargo.com/faq/> (attached as **Exhibit D**); (P. Philliou Declaration ¶¶3-6) (attached as **Exhibit E**).

6. Such a payment allows cargo to be released faster by the vendor. (P. Philliou Dep. Tr. at pg. 30-31, 43, 45) (**Exhibit A**); <https://paycargo.com/faq/> (**Exhibit D**); (P. Philliou Declaration ¶5) (**Exhibit E**).

7. Certain payers who are approved for financing in connection with this platform enter into an agreement with PayCargo Finance LP, which is a separate entity from PayCargo LLC that operates the payment platform. (P. Philliou Dep. Tr. at pg. 28) (**Exhibit A**); (P. Philliou Declaration ¶¶7-11) (**Exhibit E**). This financing involves PayCargo Finance LP advancing the funds for the freight payment and then debiting the payers account 30 days later. (P. Philliou Dep. Tr. at pg. 88-89) (**Exhibit A**); (P. Philliou Declaration ¶¶9-10) (**Exhibit E**).

8. Typically, NVOCCs are paid by their own clients within a 30-day window. (P. Philliou Dep. Tr. at pg. 14-15) (**Exhibit A**); (P. Philliou Declaration ¶11) (**Exhibit E**).

9. Plaintiff's credit was extended "predominantly to NVOCCs." (P. Philliou Dep. Tr. at pg. 42) (**Exhibit A**).

10. On or about October 28, 2020, Bay Maritimes Inc. obtained a \$500,000.00 line of credit from PayCargo Finance LP. (PCF Credit Documents) (attached as **Exhibit F**).

11. This line of credit required Bay Maritimes Inc. to provide "Shipment Documentation" in connection with each advance of funds. (PCF Credit Documents at pg. 2) (**Exhibit F**).

12. In the PCF Credit Documents, Bay Maritimes asserted that it provided "transportation and/or logistics services" and agreed to secure the debt to PayCargo Finance by granting a lien in the cargo for which Bay Maritimes provides such services. (PCF Credit Documents at pg. 4-5, 13-14) (**Exhibit F**).

13. As a practical matter, this line of credit could only be used to make payments in the PayCargo system to its network of transportation and logistics vendors. (P. Philliou Dep. Tr. at pg. 27-28) (**Exhibit A**); (P. Philliou Declaration ¶8) (**Exhibit E**).

14. A Bill of Lading number was typically provided by Bay Maritimes Inc. in connection with each transaction in the PayCargo system. (M. Mirza Dep. Tr. at pg. 23-24) (attached as **Exhibit G**).

15. Bay Maritimes Inc.'s core business was out of the United States until its FMC bond was revoked as a result of Plaintiff's claim. (M. Mirza Dep. Tr. at pg. 17-18) (**Exhibit G**).

16. The bond was cancelled on or about July 22, 2021. (Aspen000114) (attached as **Exhibit H**).

17. Approximately 98%-99% of the shipments booked by Bay Maritimes, Inc. were booked out of either the United States or Canada, and it very rarely booked shipments out of Canada prior to its bond being revoked. (M. Mirza Dep. Tr. at pg. 17-18) (**Exhibit G**).

18. Bay Maritimes Inc. used Plaintiff's financing to make the following payments through the PayCargo System, which were returned when Plaintiff attempted to debit Bay Maritimes Inc.'s account at the expiration of the 30 days:

<u>DATE</u>	<u>VENDOR</u>	<u>AMOUNT</u>
02/23/2021	Growth Capital Corp.	\$10,000.00
02/23/2021	Growth Capital Corp.	\$10,000.00
02/23/2021	Hapag-Lloyd (Canada) Inc.	\$1,672.00
02/24/2021	Hapag-Lloyd (Canada) Inc.	\$1,099.08
02/24/2021	Hapag-Lloyd (Canada) Inc.	\$3,306.24
02/24/2021	Growth Capital Corp.	\$10,000.00
02/25/2021	Hapag-Lloyd (Canada) Inc.	\$1,347.08
02/25/2021	Hapag-Lloyd (Canada) Inc.	\$1,604.31
02/25/2021	Growth Capital Corp.	\$10,825.00
03/02/2021	Hapag-Lloyd (Canada) Inc.	\$624.16
03/02/2021	Growth Capital Corp.	\$10,000.00
03/03/2021	Growth Capital Corp.	\$9,095.00
03/03/2021	Maersk Line	\$6,113.91
03/04/2021	Growth Capital Corp.	\$10,000.00
03/04/2021	Hapag-Lloyd (Canada) Inc.	\$7,539.56
03/04/2021	Hapag-Lloyd (Canada) Inc.	\$3,445.00
03/05/2021	Hapag-Lloyd (Canada) Inc.	\$1,077.08
03/07/2021	Hapag-Lloyd (Canada) Inc.	\$2,521.73
03/07/2021	Maersk Line	\$1,369.00
03/07/2021	Growth Capital Corp.	\$10,225.00
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,469.16
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,469.16
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,099.08
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,372.08
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,469.16
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$2,688.32
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,019.08
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,102.08
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,469.16
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,349.16
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,469.16
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,077.08

03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,358.16
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$2,232.87
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$4,925.00
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$2,955.00
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$3,940.00
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$770.00
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$770.00
03/18/2021	Hapag-Lloyd (Canada) Inc.	\$1,358.16
03/18/2021	Growth Capital Corp.	\$10,325.00
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$1,579.00
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$1,643.16
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$1,538.16
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$1,538.16
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$1,102.08
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$1,438.16
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$100.00
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$100.00
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$1,413.00
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$1,010.00
03/29/2021	Hapag-Lloyd (Canada) Inc.	\$4,239.00

(PCF000029-PCF000089) (attached as **Exhibit I**); (P. Philliou Dep. Tr. at pg. 83-84) (**Exhibit A**).

19. Each of the transactions in the table above was accompanied by a “Shipper Fee” and “Finance Fee.” (PCF000029-PCF000089) (attached as **Exhibit I**).

20. Hapag-Loyd (Canada) Inc. has provided the associated Bills of Lading for a majority of the transactions referred to above, further corroborating they were freight payments. (HL Bills of Lading) (attached as **Exhibit J**).

21. Hapag-Lloyd and Maersk Lines are common carriers. (M. Mirza Dep. Tr. at pg. 19) (**Exhibit G**); (P. Philliou Declaration ¶13) (**Exhibit E**).

22. On June 21, 2021, Plaintiff filed suit against Bay Maritimes Inc. in the Florida Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida to recover \$156,911.75 plus interest in connection with the funds it advanced on Bay Maritimes Inc.’s behalf. (Complaint) (attached as **Exhibit K**).

23. A default was entered against Bay Maritimes Inc. in connection with those

proceedings. (Order Granting Motion for Court Default) (attached as **Exhibit L**).

24. On January 11, 2022, a Default Final Judgment was entered against Bay Maritimes in the amount of \$150,548.54 plus interest. (Default Final Judgment) (attached as **Exhibit M**).

25. During those state court proceedings, Bay Maritimes Inc. had made partial payments to Plaintiff. (M. Mirza Dep. Tr. at pg. 25-28) (**Exhibit G**).

26. Despite the default, Bay Maritimes Inc's principal attended court hearings in the state court proceedings and represented to the court that it was a "legit amount which I owe to PayCargo..." (M. Mirza Dep. Tr. at pg. 30-31) (**Exhibit G**).

27. A default was also entered against Bay Maritimes Inc. in the instant proceedings. (D.E. 13).

28. Aspen American Insurance Company denied Plaintiff's claim on the Bay Maritimes Inc.'s bond based on the argument that Plaintiff is "not a vessel carrier, shipper, or OTI, but rather a lender to our Principal, Bay Maritimes. Inc." (Aspen000029-000031) (attached as **Exhibit N**).

29. PayCargo Finance LP has been unsuccessful in collecting on its judgment against Bay Maritimes Inc. (P. Philliou Declaration ¶¶16-19) (**Exhibit E**).

XANDER LAW GROUP, P.A.
One N.E. 2nd Avenue, Suite 200
Miami, Florida 33132
Tel: (305) 767-2001
Fax: (855) 926-3370
wayne@xanderlaw.com
marcus@xanderlaw.com
jose@xanderlaw.com

By: /s/Jose Teurbe-Tolon
WAYNE R. ATKINS
Fla. Bar No. 84000
MARCUS TAN
Fla. Bar No. 38616
JOSE TEURBE-TOLON
Fla. Bar No. 87791

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 23, 2023, a copy of this *Plaintiff PayCargo Finance LP's Statement of Material Facts in Support of its Motion for Summary Judgment* was served upon:

Served by mail:

Bay Maritimes Inc.
1290 Eglinton Ave E #05
Mississauga, ON L4W 1K8
Canada

Served via CM/ECF:

David E. Gurley
Michael A. Fant
Christopher C. Fiore
Gurley & Associates
601 South Osprey Avenue
Sarasota, Florida 34236
eservice@gurleyassociates.com

/s/Jose Teurbe-Tolon
JOSE TEURBE-TOLON, ESQ.